

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 59-90, drawn to a granule bait.

Group II, claim(s) 91-95, drawn to a process for preparing a granulate bait for control of house flies.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The expression special technical features is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art. As indicated below, the product claims are rejected by the prior art indicated below, as such, Group I does not define a contribution over the prior art.

In a voice mail message, Todd Sladek on 3/19/2010 made a provisional election which was made without traverse to prosecute the invention of Group I, claims 59-90. Affirmation of this election must be made by applicant in replying to this Office action. Claims 91-95 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double

patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Specification

The title of the invention, "Organic compounds" is not descriptive in that it lacks any specificity in relation to the claimed invention. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Granule bait composition for the control of house flies.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 61, 62, 65, 67, 69, 71, 72 contain trademark/trade names - Bitrex, Hansa Brilliant Yellow 4GX, Glucidex and/or Agrimer. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe components of the granule and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 59, 63, 66, 77, 79, 80, 82, 84, 89, 90 are rejected under 35 U.S.C. 102(b) as being anticipated by Kamei et al. (US Pat. 4,855,133), Henderson et al., Schnuch et al., EPA pesticide Inert Ingredients (2002), Miura et al. (US Pat. App. Pub. 2001/0046986)

Kamei et al. expressly disclose granules for controlling flies prepared by mixing 60 g sugar powder, 0.8 g pigment, 15 mg cis-9-tricosene (1.5 ml as 1 wt.% acetone solution), 100 ml mixture of methanol and acetone and 7 ml of a binder (20 wt% aqueous solution of gum arabic), evaporating the solvent and screening through 2 mm mesh sieve, spraying aqueous solution, kneading and making into grains about 2 mm in mean size, under pressure, where the concentration of cis-9-tricosene in the prepared specimens was 0.025 wt% and the granules contained 1 wt % of methomyl (Column 8, lines 36-68, Column 9, lines 1-30).

Claims 59-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. 4,855,133 (Kamei et al.) in view of Henderson et al..

The claimed invention is directed to a granule bait for controlling house flies containing one of more insect controlling agents, one or more lures, one or more foods, and one or more filling materials, where in the size of granule is between about 1 mm and about 5 mm.

Kamei et al. disclose granules for controlling flies prepared by mixing 60 g sugar powder, 0.8 g pigment, 15 mg cis-9-tricosene (1.5 ml as 1 wt.% acetone solution), 100 ml mixture of methanol and acetone and 7 ml of a binder (20 wt% aqueous solution of gum arabic), evaporating the solvent and screening through 2 mm mesh sieve, spraying aqueous solution, kneading and making into grains about 2 mm in mean size, under pressure, where the concentration of cis-9-tricosene in the prepared specimens was 0.025 wt% and the granules contained 1 wt % of methomyl (Column 8, lines 36-68, Column 9, lines 1-30). It is disclosed that the pigments include yellow pigments, such as Hansa Yellow, pigment Yellow 1 (alpha-(o-nitro-p-anisylazo)-o-acetoacetotoluide), and that mixtures of pigments can be used (Columns 2, 3, Column 4, lines 1-23). It is disclosed that the granules are preferably about 1 to about 3 mm in grain size (Column 4, lines 23-36). It is disclosed that various insecticides which have insecticidal effect on flies can be used, including pyrethroid, organic phosphorous and carbamate insecticides (Column 4, lines 37-68, Column 5, lines 1-24). It is disclosed that accidental ingestion preventing agents can be used (Column 5, lines 55-60).

Henderson et al. disclose that denatonium benzoate, marketed under the trade name Bitrex, has been used for at least 20 years as an aversive agent when added to toxic substances to prevent accidental ingestion (page 203).

Schnuch et al. disclose that sugars, such as sucrose and lactose, are effective baits for the housefly, *Musca domestica* (Pages 767, 7680).

EPA pesticide Inert Ingredients (2002) discloses that Pigment Yellow 73 (Hansa Brilliant Yellow 4GX) is suitable for use as an inert ingredient in pesticides (Abstract).

Symecko et al. disclose that lactose containing granules using maltodextrin as a binder had larger mean size and improved friability than those containing polyvidone (Abstract).

Miura et al. disclose imidacloprid and thiametoxam are effective for controlling flies. can be prepared in the form of granules, that said preparations can include dispersants and that pyrethroid, organophosphorous, carbamate and phenylpyrazole insecticides can also be used(Paragraphs 0016, 0037, 0038, 0042).

Wu disclose arylpyrazole can be used in granules and that the compositions can contain other additives such as dispersants, such as alkylate vinylpyrrolidone polymers (abstract, column 7, lines 10, 11, Column 8, lines 12-35).

Kamei et al. disclose granules for controlling flies prepared by mixing 60 g sugar powder, 0.8 g pigment, 15 mg cis-9-tricosene (1.5 ml as 1 wt.% acetone solution), 100 ml mixture of methanol and acetone and 7 ml of a binder (20 wt% aqueous solution of gum arabic), evaporating the solvent and screening through 2 mm mesh sieve, spraying aqueous solution, kneading and making into grains about 2 mm in mean size, under pressure, where the concentration of cis-9-tricosene in the prepared specimens was 0.025 wt% and the granules contained 1 wt % of methomyl (Column 8, lines 36-68, Column 9, lines 1-30), that pigments include yellow pigments, such as Hansa Yellow, pigment Yellow 1 (alpha-(o-nitro-p-anisylazo)-o-acetoacetotoluide), that mixtures of pigments can be used, that the granules are preferably about 1 to about 3 mm in grain, that various insecticides which have insecticidal effect on flies

can be used, including pyrethroid, organic phosphorous and carbamate insecticides and that accidental ingestion preventing agents can be used.

The difference between Kamei et al. and the claimed invention is that Kamei et al. does not expressly disclose the use of Denatonium Benzoate, lactose, Yellow 73, maltodextrin or alkylated vinylpyrrolidone, imidacloprid or thiametoxam in a granule bait for controlling house flies. However, the prior art amply suggests the same as Henderson et al. disclose that denatonium benzoate, marketed under the trade name Bitrex, has been used for at least 20 years as an aversive agent when added to toxic substances to prevent accidental ingestion; Schnuch et al. disclose that sugars, such as sucrose and lactose, are effective baits for the housefly, *Musca domestica*; EPA pesticide Inert Ingredients (2002) discloses that Pigment Yellow 73 (Hansa Brilliant Yellow 4GX) is suitable for use as an inert ingredient in pesticides; Symecko et al. disclose that lactose containing granules using maltodextrin as a binder had larger mean size and improved friability than those containing polyvidone; Miura et al. disclose imidacloprid and thiametoxam are effective for controlling flies. can be prepared in the form of granules, that said preparations can include dispersants and that pyrethroid, organophosphorous, carbamate and phenylpyrazole insecticides can also be used; and Wu disclose arylpyrazole can be used in granules and that the compositions can contain other additives such as dispersants, such as alkylate vinylpyrrolidone polymers. As such, one of ordinary skill in the art would have expected that addition of denatonium benzoate would deter the accidental ingestion of the granual bait, that the addition of lactose would provide an effective bait for houseflies, that Yellow 73 would be a suitable dye for a granule bait, that maltodextrin would be effective as a binder for a granule bait, that imidacloprid and thiametoxam would be effective insecticide when

used in a granule bait in controlling houseflies, and that alkylated vinylpyrrolidone polymers would be suitable for use as dispersants in the formulation of granule baits.

Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been collectively taught by the combined teachings of the references.

Conclusion

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. Examiner maintains a compressed schedule and may be reached Monday, Tuesday, Wednesday and Thursday, 6:00 am – 4:30 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Johann R. Richter, can be reached at (571)272-0646. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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